

J. Stephen Gehring, Private Citizen
Bobby Jones, Private Citizen
Lois Jones, Private Citizen
C/O: 8157 W. Deadeye Rd.
Payson, Arizona [PZ 85541]
(928) 474-9859
FAX: (928) 474-9799
In Propria Persona

ORIGINAL



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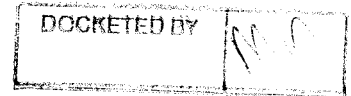
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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

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COMMISSIONERS

Gary Pierce, Chairman
Paul Newman, Commissioner
Brenda Burns, Commissioner
Bob Stump, Commissioner
Sandra D. Kenndy, Commissioner

Before the Arizona Corporation Commission

J. Stephen Gehring, Bobby Jones, Lois
Jones Private Citizens, Injured Parties,
Complainants,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.
Respondents.

DOCKET NO. W-03514A-12-0008

**MOTION TO COMPEL RESPONDENT'S
COMPLIANCE WITH SUBPOENA**

NOW COMES, the Complainants J. Stephen Gehring, Bobby Jones and Lois Jones, to Motion the Commission and its Administrative Law Judge to Compel Respondents to fully Comply with the Subpoena served upon them on March 20, 2012.

On or about March 27, 2012 Respondents partially complied with the Subpoena and did supply some obviously altered, reformatted and falsified documents pertaining to Customer monthly consumption.

On March 27, 2012 Respondent's mailed their "Motion to Modify Subpoena" and refused to supply other documentation, records, hauling logs and invoices relevant and material to the 2011 Water Augmentation Period and these proceedings particularly those pertaining to the EVP System and monthly consumption;

On April 3, 2012 Complainants mailed their "Response and Objection to Respondents Motion to Modify Subpoena, Motion to Deny and Compel Compliance with the Subpoena by Order, with Evidentiary Exhibits;

On April 5, 2012 Complainants mailed their "2nd Response and Objection to Respondents Motion to Modify Subpoena, Motion to Deny and Compel Compliance with the Subpoena by Order, with Evidentiary Exhibits" clearly intended as a Supplement to the 1st Pleading of identical Caption.

On April 10, 2012 Respondents mailed their "Reply to Complainants 2nd Response and Objection to Respondents Motion to Modify Subpoena;"

On April 16, 2012 Complainants mailed their "Objection to Respondents Reply to Complainants' "Supplement" 2nd Response and Objection to Respondents Motion to Modify Subpoena;"

Referencing the Procedural Order of March 19, 2012: "any motions which are filed in this matter and *which are not ruled upon* by the Commission within 20 calendar days of the filing date of the motion *shall be deemed denied*." (See: Page 3 lines 3-5 of the Procedural Order of March 19, 2012).

As of the date of the mailing of this Motion to Compel Compliance with the Subpoena more than 24 days have passed since the Respondents "Motion to Modify Subpoena" was filed with the Commission. There has been no Notice from the Commission or its Administrative Law Judge of any ruling granting the Respondent's Motion to Modify Subpoena.

Respondents objected to compliance with the Subpoena to produce records, logs, invoices and other documentation, as over burdensome and that those documents that pertained to the EVP System were not relevant or material. This documentation is relevant, material and directly related to the Water Augmentation Period. Respondents concealed them and would by disclosure otherwise incriminate themselves.

Respondent "may not claim privilege for corporate records, in every such case the records kept are not within the protection of the self-incrimination privilege." **Shapiro v. United States**, 335 U. S. 1, 58 (1948) "required records are also not protected by the 5th Amendment privilege against self-incrimination **Craib v. Bulmash**, 777, P.2d 1120 (Cal. 1989) "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restriction validly established" **Shapiro v. United States**, 335 U. S. 1, 58 (1948) Id at 33.

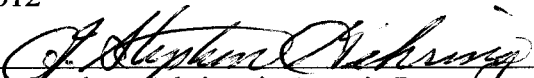
"Agency subpoena power is not confined to those over whom it may exercise regulatory jurisdiction, but extends to any persons from whom it can obtain information relevant and material to its legitimate inquiry." **FCC v. Cohn**, 154 F. Supp. 899, 906 (S.D.N.Y. 1957). "For an agency to exercise subpoena power, it need not show that it has regulatory jurisdiction over the person subpoenaed." **Freeman v. Fidelity-Philadelphia Trust Co.**, 248 F. Supp. 487 492 (E.D. Pa. 1965). "Testimony and records pertinent to a legitimate investigation may be subpoenaed even though the subpoena is directed to a third person who is not subject to the agency's jurisdiction and who is not the subject of the investigation." **United States v. Marshall Durbin & Co.**, 363 F.2d 1 (5th Cir. 1966); **Freeman v. Brown Bros. Harriman & Co.**, 357 F.2d 741 (2d Cir. 1966). "All that is necessary is that the records be relevant to an investigation that is within the agency's authority." **Redding Pine Mills v. State Bd.**, 320 P.2d 25 (Cal. App. 1958) **State v. Mees**, 49 N.W.2d 386 (Minn. 1951).

"The unduly broad scope of an administrative subpoena may no longer be set up as a defense in the enforcement proceeding." **FTC v. Crafts**, 355 U.S. 9 (1955) and **Pope & Talbot v. Smith**, 340 P.2d 960 (Ore. 1959). "Broadness alone is not sufficient justification to refuse enforcement of a subpoena." **FTC v. Texaco**, 555 F.2d 862, 882 (D. C. Cir. 1977). The fact that compliance might call for thousands of documents is not

enough to show the subpoena is unduly burdensome.” **NLRB v. G.H.R. Energy Corp., 707 F.2d 110 (5th Cir. 1982).** The very purpose of the administrative subpoena is to discover and procure evidence, not to prove a pending case, but to make a case if, in the agency’s judgment, the facts thus discovered should justify doing so. **EEOC v. Bay Shipbuilding Corp., 668 F.2d 304,312 (7th Cir. 1981).** Probable cause is irrelevant to administrative subpoena power because the agency may use the power to inform itself as to whether probable cause exists. An agency subpoena will be enforced even “if one were to regard the request for information as caused by nothing more than official curiosity.” **United States v. Morton Salt Co., 338 U. S. 632 (1950) Id. at 652.**

WHEREFORE, the Complainants Motion the Commission and its honorable Administrative Law Judge to issue an Order to Compel Respondents Robert T. Hardcastle, Payson Water Co. Inc. and Brooke Utilities, Inc. to fully comply with the Subpoena served upon them on March 20, 2012 without any further delay or opposition. In the alternative the Complainants request that the Commission impose sanctions pursuant to ARS § 40-424 for Contempt of the Corporation Commission.

Respectfully submitted this 23rd day of April, 2012


J. Stephen Gehring, in Propria Persona


Bobby Jones, in Propria Persona


Lois Jones, in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Motion have been mailed this 23rd day April, 2012 to the following:

DOCKET CONTROL
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing Motion have been mailed this 23rd day April, 2012 to the following:

Bobby and Lois Jones
7325 N. Caballero Rd.
Payson, Az. 85541

Robert T. Hardcastle
P. O. Box 82218
Bakersfield, Ca. 93380

By: 